

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

REGINALD GIBSON,

Plaintiff,

vs.

CASTELLANOS, et al.,

Defendants.

1:21-cv-00794-ADA-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT DEFENDANT
C. RILEY BE DISMISSED FROM THIS
ACTION UNDER RULE 4(m)**

(ECF No. 26.)

**OBJECTIONS, IF ANY, DUE ON OR
BEFORE OCTOBER 13, 2023**

I. BACKGROUND

Reginald Gibson (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983.

On August 30, 2023, the United States Marshal (“Marshal”) filed a return of service unexecuted, indicating the Marshal was unable to locate Defendant C. Riley for service of process. (ECF No. 26.) On September 9, 2023, the Court issued an order requiring Plaintiff to respond in writing by September 29, 2023, showing cause why Defendant C. Riley should not

1 be dismissed from this action for Plaintiff's failure to provide sufficient information to locate
2 Defendant C. Riley for service of process. (ECF No. 27.)

3 On September 18, 2023, Plaintiff filed a response to the Court's order to show cause.
4 (ECF No. 28.) In his response Plaintiff fails to provide any additional information to help locate
5 Defendant C. Riley for service of process.

6 **II. SERVICE BY UNITED STATES MARSHAL**

7 Pursuant to Rule 4(m),

8 If a defendant is not served within 90 days after the complaint is filed, the court,
9 -- on motion or on its own after notice to the plaintiff -- must dismiss the action
10 without prejudice against that defendant or order that service be made within a
specified time. But if the plaintiff shows good cause for the failure, the court must
extend the time for service for an appropriate period.

11 Fed. R. Civ. P. 4(m).

12 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of
13 the Court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). "[A]n incarcerated
14 *pro se* plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S. Marshal for service
15 of the summons and complaint and . . . should not be penalized by having his action dismissed
16 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform his
17 duties." Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912
18 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472
19 (1995). "So long as the prisoner has furnished the information necessary to identify the
20 defendant, the marshal's failure to effect service is 'automatically good cause . . .'" Walker, 14
21 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990)). However,
22 where a *pro se* plaintiff fails to provide the Marshal with accurate and sufficient information to
23 effect service of the summons and complaint, the Court's *sua sponte* dismissal of the unserved
24 defendants is appropriate. Walker, 14 F.3d at 1421-22.

25 In light of Plaintiff's failure to show cause why Defendant C. Riley should not be
26 dismissed from this action, Defendant C. Riley should be dismissed from this action under Rule
27 4(m) for Plaintiff's failure to provide information to enable the U.S. Marshal to locate Defendant
28 C. Riley for service of process.

1 **III. CONCLUSION AND RECOMMENDATIONS**

2 Based on the foregoing, the court **HEREBY RECOMMENDS** that Defendant C. Riley
3 be dismissed from this action under Rule 4(m) based on Plaintiff's failure to provide sufficient
4 information to locate Defendant C. Riley for service of process.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **On or before**
7 **October 13, 2023**, any party may file written objections with the court. Such a document should
8 be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to
9 the objections shall be served and filed within **fourteen (14) days** after the date the objections
10 are filed. The parties are advised that failure to file objections within the specified time may
11 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.
12 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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14 IT IS SO ORDERED.

15 Dated: **September 21, 2023**

16 **/s/ Gary S. Austin**
17 UNITED STATES MAGISTRATE JUDGE
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